

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Robert Beachy,

Case No. 5:08 CV 2894

Petitioner,

MEMORANDUM OPINION
AND ORDER

-vs-

JUDGE JACK ZOUHARY

The State of Ohio,

Respondent.

On December 10, 2008, Petitioner *pro se* Robert Beachy filed this habeas corpus action under 28 U.S.C. § 2254. Beachy is incarcerated in an Ohio penal institution, having been convicted of menacing by stalking. Petitioner alleges his trial counsel was constitutionally ineffective for not challenging a juror's relationship to the prosecutor (the juror was the prosecutor's dentist). Petitioner alleges "[a]t the conclusion of the trial, the juror made eye contact and gestured" affirmatively (Doc. No. 1, p. 5). For the reasons stated below, this action is dismissed.

A federal district court may entertain a petition for a writ of habeas corpus by a person in state custody only on the ground that the custody violates the Constitution or laws of the United States. Furthermore, the petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b)(1)(A).

It is evident on the face of the Petition that Petitioner has yet to appeal his conviction, an avenue still available to him under Ohio Appellate Rule 5 (Doc. No. 1, pp. 2, 5-6). His Petition is thus premature.

Accordingly, the Petition is denied and this action is dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

February 10, 2009